

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

In the Matter of

S.T.A.R. ASSOCIATES, INC.

Employer

and

Case 5-RC-15225

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 37, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein call the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. S.T.A.R. Associates, Inc. (hereinafter "the Employer" or "the Company"), a Maryland corporation, is engaged in the business of providing human resource training and development. At the hearing, the Employer stipulated that it meets the monetary requirements for the Board's discretionary jurisdictional

standards. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act.

The parties stipulated, and I find, that the International Union of Operating Engineers, Local 37, AFL-CIO (hereinafter “the Petitioner” or “the Union”) is a labor organization within the meaning of Section 2(5) of the Act. There is no history of collective bargaining between the parties for these employees. The parties stipulated that there are no prior collective-bargaining agreements covering the petitioned-for employees.

The Petitioner seeks to represent a unit of all full-time S.T.A.R. Associates Inc. van and bus drivers contracted to Anne Arundel County Department of Aging, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act. At the hearing, the parties stipulated to the following unit description: all full-time and regular part-time van and bus drivers and non-supervisory dispatchers working for the employer under the Anne Arundel County Department of Aging contract, but excluding all office clericals, professional employees, guards, and supervisors as defined in the Act. The Employer asserts that there are approximately 39 employees in the petitioned-for unit.

POSITIONS OF THE PARTIES

The Employer contends that the instant petition was filed prematurely. The Employer asserts that although the petition filed by the Union is dated June 29, 2001, the contract for the Employer to provide services to Anne Arundel County did not begin until July 1, 2001. The Petitioner notes that it previously filed a petition seeking the same unit as herein but naming the predecessor employer. The prior petition was withdrawn without prejudice after Anne Arundel County awarded the contract to the instant employer. Thereafter, the Union filed the instant petition. The contract awarded to the Employer by Anne Arundel County is effective from July 1, 2001 to June 30, 2002.

The Employer also contends that Management Training Corp., 317 NLRB 1355 (1995), should not be applied in the instant case or should be reversed, and that the Board should return to the standards set forth in Res-Care, Inc., 280 NLRB 670 (1986). The Petitioner, to the contrary, urges that the Board adhere to Management Training.

The Employer employs drivers that provide transportation services to individuals age 55 and over. The routes and schedules are determined by the Anne Arundel County Department of Aging. Employer witness Jerome Robinson, its chief financial officer and project manager, testified that the Employer received notification, by letter dated June 12, 2001, that its proposal to provide transportation services for the Department of Aging had been accepted. As a result of this notice, the Employer knew it had to hire 39 drivers as this was a requirement under the bidding procedure (the RFP) for the contract. Accordingly, the Employer held three meetings between June 12 and July 1, 2001 with

potential employees¹. During these meetings, the potential employees were introduced to the Employer, advised of the benefit packages the Employer would offer, and informed that they would be retained as employees if they desired to continue working as drivers. The potential employees completed employment applications during these meetings.

FINDINGS

I reject the Employer's argument that the petition, although filed on Friday, June 29 -- one working day prior to the effective date of the Employer's contract with Anne Arundel County -- should be dismissed as premature. Following the June 12 contract award, the Employer interviewed the 39 individuals employed by the predecessor employer, explained to each the terms and conditions of employment it would offer to its employees, and, prior to June 29, offered all 39 of those individuals continued employment. The Employer hired no other employees. Thus the Employer clearly employed a representative complement of employees when it began its operations on Monday, July 1. To dismiss the petition in these circumstances would, in my opinion, elevate form over substance.

I also reject the Employer's contention that Management Training should not be applied herein. Management Training is extent Board precedent to which I am bound, and, indeed, has been accepted by every court that has reviewed the matter. See, e.g., Aramark Corp. v. NLRB, 179 F.3d 872 (10th Cir. 1999) (en banc), and cases cited therein.

CONCLUSION AS TO THE UNIT

Based on the foregoing, the record as a whole, and careful consideration of the arguments of the parties at the hearing, I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining:

All full-time and regular part-time van and bus drivers and non-supervisory dispatchers working for the employer under the Anne Arundel County Department of Aging contract, but excluding all office clericals, professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending

¹ The potential employees were individuals who were employed by Provident Center, the previous employer under the contract with the Anne Arundel County Department of Aging.

immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 37, AFL-CIO**.

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **JULY 30, 2001**.

Dated July 16, 2001

at Baltimore, Maryland

/s/ Wayne R. Gold
Regional Director, Region 5



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